Due service of the within brief is hereby acknowledged this.....day of October, A. D. 1934.

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Counsel for Petitioner.

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CHARLES ELMORE

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1934.

No. 170.

Guy T. Helvering, Commissioner of Internal Revenue,

Petitioner,

vs.

Twin Bell Oil Syndicate,

Respondent.

SUPPLEMENT TO RESPONDENT'S BRIEF.

CLAUDE I. PARKER,
JOHN B. MILLIKEN,
GEORGE H. KOSTER,
808 Bank of America Bldg., Los Angeles,
Counsel for Respondent.

Of Counsel:

L. A. LUCE,
937 Munsey Bldg., Washington, D. C.

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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The Circuit Court of Appeals for the Ninth Circuit held in this case that section 204(c) (2) of the Revenue Act of 1926 provided for the allowance of a depletion deduction based on 27½ per cent of gross income and that said section was complete in itself. As authority for the percentage depletion allowance, the Circuit Court also held that the gross income upon which the 27½ per cent was to be computed was in effect the gross proceeds derived from the sale of oil and gas, and further, that such gross income was not to be reduced by royalties paid, before computing the 27½ per cent deduction.

In the brief for the respondent, heretofore filed with this Honorable Court, argument was submitted in support of the conclusions of the lower court. Since the preparation of that brief, the respondent has discovered the decision of this Honorable Court in the case of *Old Colony Railroad Company v. Commissioner,* 285 U. S. 552, 76 Law. Ed. 484, which involves the rules of statutory construction especially applicable to this proceeding and the respondent respectfully submits this supplement to its brief to call this case to the court's attention and to show briefly its applicability to the instant proceeding.

In the *Old Colony Railroad Company* case the Old Colony Railroad Company had sold bonds at a premium. It was claiming as a deduction from its gross income the full amount of interest paid on these bonds. The Commissioner contended that the deduction for interest authorized by statute was intended by Congress to mean the total amount of interest paid less a pro rata of the premium received by the company upon the sale of its bonds. This court in discussing this contention stated as follows:

> "The argument is that although the regulations are inaptly phrased and are susceptible of the construction petitioner places upon them their real intent was to adjust the nominal interest paid on a corporation's indebtedness to the actual amount it is paying for the use of the money represented by the par of the bond,—that is, to what accountants have called the "effective rate" of interest." * * *
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>
> "The Commissioner must and does go farther and contends that the receipt of such a premium reduces the item of interest paid and renders the sum nomi-

nated as such in the bond something different from the 'interest . . . on its indebtedness' mentioned in §234 of the Revenue Act of 1921 as a permissible deduction from gross income.

"In other words the contention is that by the use of the quoted phrase the statute did not intend to allow the deduction of the amount agreed to be paid, which the contract denominates 'interest', but of a different sum to be ascertained by a calculation which will allocate the payment between a partial and ratable return of the premium and 'effective' interest on the par of the security.

"Is this the reasonable construction of the language of the act,—'all interest . . . on its indebtedness?'

The rule which should be applied is established by many decisions. 'The Legislature must be presumed to use words in their known and ordinary signification.' Levy v. M'Cartee, 6 Pet. 102, 110, 8 L. Ed. 334, 337. *'The popular or received import of words furnishes the general rule for the interpretation of public laws.'* Maillard v. Lawrence, 16 How. 251, 261, 14 L. Ed. 925, 930. And see United States v. Buffalo Natural Gas Fuel Co., 172 U. S. 339, 341, 43 L. Ed. 469, 470, 19 S. Ct. 200; United States v. First Nat. Bank, 234 U. S. 245, 258, 58 L. Ed. 1298, 1303, 34 S. Ct. 846; Caminetti v. United States, 242 U. S. 470, 485, 61 L. Ed. 442, 452, L. R. A. 1917F, 502, 37 S. Ct. 192, Ann. Cas. 1917B, 1168. As was said in Lynch v. Alworth-Stephens Co., 267 U. S. 364, 370, 69 L. Ed. 660, 662, 45 S. Ct. 274, *'the plain,*

obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and ingenuity and study of an acute and powerful intellect would discover.' This rule is applied to taxing acts; De Ganay v. Lederer, 250 U. S. 376, 381, 63 L. Ed. 1042, 1044, 39 S. Ct. 524.

"Applying the accepted tests to the language of the statute, we are of the opinion that the construction contended for by the commissioner is inadmissible. In common parlance the bonded indebtedness of a corporation imports the total face of its outstanding bonds—the amount which must be paid at their maturity. The phrase is not generally used to connote par plus an unreturned proportion of premium.

"And as respects 'interest,' the usual import of the term is the amount which one has contracted to pay for the use of borrowed money. He who pays and he who receives payment of the stipulated amount conceives that the whole is interest. In the ordinary affairs of life no one stops for refined analysis of the nature of a premium, or considers that the periodic payment universally called 'interest' is in part something wholly distinct—that is, a return of borrowed capital. It has remained for the theory of accounting to point out this refinement. We cannot believe that Congress used the word having in mind any concept other than the usual, ordinary and everyday meaning of the term, or that it was acquainted with the accountants' phrase 'effective rate' of interest and intended that as the measure of the permitted deduc-

"In short, we think that in the common understanding 'interest' means what is usually called interest by those who pay and those who receive the amount so denominated in bond and coupon, and that the words of the statute permit the deduction of that sum, *and do not refer to some esoteric concept derived from subtle and theoretic analysis.*

"If there were doubt as to the connotation of the term, and another meaning might be adopted, the fact of its use in a tax statute would incline the scale to the construction most favorable to the taxpayer. Gould v. Gould, 245 U. S. 151, 62 L. Ed. 211, 38 S. Ct. 53; United States v. Merriam, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547, 44 S. Ct. 69; Bowers v. New York & A. Lighterage Co., 273 U. S. 346, 71 L. Ed. 676, 47 S. Ct. 389; United States v. Updike, 281 U. S. 489, 74 L. Ed. 984, 50 S. Ct. 367; Burnet v. Niagara Falls Brewing Co., 282 U. S. 648, 75 L. Ed. 594, 51 S. Ct. 262." (Italics ours.)

We respectfully submit that under the rules of statutory construction applied in the above decision the words of Section 204(c)(2) of the Revenue Act of 1926 permit the depletion allowance to be computed on the basis of 27½ per cent of the taxpayer's gross income from oil and gas property, and do not refer to some esoteric concept derived from the subtle and theoretic analysis propounded by the Commissioner, which, as indicated in the principal brief for the respondent filed herein, would require the insertion of the provisions of another section of the

Statute (Sec. 234(a)(8) as a part of Sec. 204(c)(2), the grouping of taxpayers in order to compute an aggregate depletion allowance, and an intricate computation to determine the proportion of the aggregate allowance to which each of the taxpayers in the group would be entitled.

We respectfully submit that the lower court's decision should be affirmed.

Respectfully submitted,

CLAUDE I. PARKER,
JOHN B. MILLIKEN,
GEORGE H. KOSTER,
Counsel for Respondent,
808 Bank of America Bldg.,
Los Angeles, California.

Of Counsel:

L. A. LUCE,
937 Munsey Bldg.,
Washington, D. C.

November, 1934.